

## **MINUTES OF THE CITY COUNCIL**

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, OCTOBER 21, 2003**

The Council of the City of San José convened in Regular Session at 9:00 a.m. in Council Chambers at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Yeager; Gonzales.

Absent: Council Members - Dando, Williams (Excused).

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:07 a.m. in Room 600 to (A) confer with Legal Counsel with respect to existing litigation pursuant to Government Code Section 54956.9 subsection (a) to consider the cases of (1) Torgerson v. MJC, Trucking, et al., (2) Preservation Action Council of San José v. City of San José, et al., (3) Horta LLC v. City of San José; (B) confer with Legal Counsel to discuss anticipated litigation (1) pursuant to subsection (b) of Section 54956.9 of the Government Code in one (1) matter involving significant exposure to litigation; and pursuant to subsection (c) of Section 54956.9 of the Government Code in one (1) matter regarding initiation of litigation; and (C) Public employee performance evaluation pursuant to Government Code Section 54957, Title: City Auditor.

By unanimous consent, Council reconvened from Closed Session and recessed at 11:02 a.m. and reconvened at 1:36 p.m. in Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Dando (Excused).

### **INVOCATION**

The youth choir from Leigh High School, the “Madrigals”, directed by Stan Neff, performed a song. (District 9)

### **PLEDGE OF ALLEGIANCE**

Mayor Gonzales led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Council Member Williams, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. Vote: 10-1-0-0. Absent: Dando.

## CEREMONIALS

- 1.5 Presentation of a commendation to Services for Brain Injury (SBI) in recognition of Brain Injury Month; for the past fourteen years, SBI has tirelessly worked to assist their clients and their families with services to help them regain maximum independence and to improve their quality of life. (Dando)  
(Rules Committee referral 10/15/03)**

Documents Filed: None.

Discussion/Action: Item 1.5 was deferred to October 28, 2003.

## CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Cortese and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 10-0-1-0. Absent: Dando.

- 2.2 (a) ORD. NO. 26994 – Amends Title 22 of the San José Municipal Code to authorize the Director of the Department of Convention, Arts and Entertainment to provide flexible pricing of the Convention and Cultural facilities.**

Documents Filed: Proof of Publication of the title of Ordinance No. 26994, executed on October 14, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 26994 was adopted. Vote: 10-0-1-0. Absent: Dando.

- (b) ORD. NO. 26996 – Amends Chapter 13.36 of Title 13 and Chapter 15.50 of Title 15 of the San José Municipal Code to require Construction Impact Mitigation Plans for Major Construction Projects in the public right-of-way.**

Documents Filed: Proof of Publication of the title of Ordinance No. 26996, executed on October 14, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 26996 was adopted. Vote: 10-0-1-0. Absent: Dando.

**2.3 Adoption of a resolution amending the 2003-2004 Schedule of Fees and Charges for the Police Department to reflect updated costs related to Card Table Fees. CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated October 1, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71786, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71603 to Increase the Card Table Fees", was adopted. Vote: 10-0-1-0. Absent: Dando.

**2.4 Report on Request for Proposal and approval to reject the sole proposal received for a Criminal Investigation Case Management System (CICMS). CEQA: Not a Project. (General Services/Police)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, and Acting Chief of Police Thomas Wheatley, dated October 1, 2003, recommending approval of the Report on Request for Proposal and approval to reject the sole proposal received for Criminal Investigation Case Management System.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and carried unanimously, the Report on Request for Proposal was accepted, and the rejection of the proposal received for a Criminal Investigation Management System was approved. Vote: 10-0-1-0. Absent: Dando.

**2.5 Approval of Independent Police Auditor, Teresa Guerrero-Daley's travel to Mexico City, Mexico, October 28-31, 2003, to attend the International Seminar on Police Accountability. Funding: National Institute for Penal Sciences. (Independent Police Auditor)**

Documents Filed: Memorandum from Independent Police Auditor Teresa Guerrero-Daly, dated October 6, 2003, requesting approval for travel to Mexico City, Mexico, October 28-31, 2003, to attend the International Seminar on Police Accountability.

Discussion/Action: The travel for Independent Police Auditor Teresa Guerrero-Daley to Mexico City, Mexico to attend the International Seminar on Police Accountability October 28-31, 2003, was approved. Vote: 10-0-1-0. Absent: Dando.

**2.6 Adoption of a resolution to provide five certifications required by the State Resources Agency for grant funding associated with the Coyote Creek Trail/Selma Olinder Park Project. CEQA: Mitigated Negative Declaration, PP00-10147. Council District 3. SNI Area University, Five Wounds, Brookwood Terrace. (Parks, Recreation and Neighborhood Services)**

## 2.6 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated October 2, 2003, recommending adoption of said resolution. (2) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated October 20, 2003, transmitting additional information about the project.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, Resolution No. 71787, entitled: "A Resolution of the Council of the City of San José Providing Five Certifications Required by the State Resources Agency for Grant Funding Associated with the Coyote Creek Trail/Selma Olinder Park", was adopted. Vote: 10-0-1-0. Absent: Dando.

- 2.7 (a) Adoption of the following appropriation ordinance and funding sources resolution amendments in the General Fund:**
- (1) Increase the revenue estimate for Revenue from the Federal Government by \$223,384;**
  - (2) Increase the City-wide appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$173,384; and**
  - (3) Increase the City-wide appropriation to the Police Department in the amount of \$50,000.**
- (b) Reauthorize the following existing positions for the term of the grant: 1.0 FTE Full-time Community Activity Worker and 0.5 FTE Part-time D-benefited Staff Analyst.**

**CEQA: Not a Project. Council District 3. SNI Area: Washington. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Acting Chief of Police Thomas Wheatley, Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated October 1, 2003, recommending adoption of said appropriation ordinance and funding sources resolution amendments, and reauthorize existing 1.0 Full Time Community Activity Worker and 0.5 Part Time D-benefited Staff Analyst.

Discussion/Action: The reauthorization of the existing 1.0 Full Time Community Activity Worker and 0.5 Part Time D-benefited Staff Analyst was approved, and Ordinance No. 26998, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Monies in the General Fund for the Federal Weed and Seed Grant Funds in the Washington Neighborhood; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 71788, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund", were adopted. Vote: 10-0-1-0. Absent: Dando.

- 2.8 Adoption of a resolution initiating proceedings and setting November 18, 2003 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as Franklin No. 51, which involves the annexation to the City of San José of 0.503 acre of land, located on the southeastern corner of Garden Avenue and Southside Drive, generally bounded by the City of San José Annexation Franklin 28, and the detachment of the same from the Central Fire Protection, County Library Service Area, County Sanitation 2-3, and the County Lighting Service. CEQA: Resolution No. 71359. Council District 7. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 1, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71789, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Franklin No. 51 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. Vote: 10-0-1-0. Absent: Dando.

- 2.9 Approval of the agreement with the Commission on Peace Officer Standards and Training (POST) related to components of the previously approved POST - reimbursed training program for Peace Officers in Santa Clara County in the amount of \$138,000, for the term of July 1, 2003 to June 30, 2004. CEQA: Not a Project. (Police)**

Documents Filed: Memorandum from Acting Chief of Police Thomas Wheatley, dated October 1, 2003, recommending approval of said agreement.

Discussion/Action: The agreement with the Commission on Peace Officer Standards and Training (POST) related to components of the previously approved POST reimbursed training program for Peace Officers in Santa Clara County in the amount of \$138,000, for the term of July 1, 2003 to June 30, 2004 was approved. Vote: 10-0-1-0. Absent: Dando.

- 2.10 Report on bids and award of contract for William H. Cilker Park Project to the low bidder, Robert A. Bothman, Inc., for the base bid in an amount of \$305,305, and approval of a contingency in the amount of \$30,000. CEQA: Mitigated Negative Declaration, PP03-03-092. Council District 9. (Public Works/Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated October 1, 2003, recommending award of said contract to the low bidder, Robert A. Bothman, Inc., with related contingency.

Discussion/Action: The award of the contract to the low bidder Robert A. Bothman, Inc., with related contingency, for the William H. Cilker Park Project was approved and its execution authorized. Vote: 10-0-1-0. Absent: Dando.

- 2.11 Approval of the second amendment to the agreement with Biggs Cardosa Associates, Inc. for the Norman Y. Mineta San José International Airport - Skyport Drive Grade Separation Project, increasing the compensation by \$393,390, from \$2,200,000 to \$2,593,390, and extending the term from June 30, 2004 to December 31, 2004. CEQA: Resolution No. 67380, PP 02-07-191. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 1, 2003, recommending approval of the second amendment to said agreement with Biggs Cardosa Associates, Inc.

Discussion/Action: The second amendment to the agreement with Biggs Cardosa Associates, Inc., for the Skyport Drive Grade Separation project was approved, and its execution authorized. Vote: 10-0-1-0. Absent: Dando.

- 2.12 Adoption of a resolution authorizing the reorganization of territory designated as Berryessa No. 67, which involves the annexation to the City of San José of 6.72 acres of land, located on the west side of King Road, approximately 250 feet southerly of Commodore Drive and generally bounded by the City of San José Annexations Berryessa No. 49, Berryessa No. 41, Berryessa No. 66, Penitencia No. 66, and Berryessa No. 52, and the detachment of the same from the appropriate special districts including: Central Fire Protection and the County Service Area No. 01 (County Library Services Area). CEQA: Mitigated Negative Declaration, PDC02-104. Council District 4. (Planning, Building and Code Enforcement) (Deferred from 10/14/03 – Item 2.4)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 17, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71790, entitled: “A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Berryessa No. 67 Subject to Liability for General Indebtedness of the City”, was adopted. Vote: 10-0-1-0. Absent: Dando.

- 2.13 Adoption of a resolution authorizing the reorganization of territory designated as McKee No. 122 which involves the annexation to the City of San José of 3.33 acres of land, including the abutting portion of right-of-way between Cedarville Lane and North Capitol Avenue, located on the southeast corner of Capitol Avenue and Baton Rouge Drive and generally bounded by the City of San José Annexations McKee No. 78-A and McKee No. 97, and the detachment of the same from the appropriate special districts including: Central Fire Protection and the County Service Area No. 1 (County Library Services Area). CEQA: Mitigated Negative Declaration, PDC03-034. Council District 4. (Planning, Building and Code Enforcement) (Deferred from 10/14/03 – Item 2.5)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 15, 2003, recommending adoption of said resolution.

## **2.13 (Cont'd.)**

Discussion/Action: Resolution No. 71791, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as McKee No. 122 Subject to Liability for General Indebtedness of the City", was adopted. Vote: 10-0-1-0. Absent: Dando.

### **END OF CONSENT CALENDAR**

## **STRATEGIC SUPPORT SERVICES**

### **3.2 Report of the Rules Committee - Meeting of October 8, 2003 Vice Mayor Dando, Chair**

Documents Filed: The Rules/Agency Rules Committee Report dated October 8, 2003.

(a) Redevelopment Agency items reported out at Redevelopment Agency meeting

(b) City Council

(1) Review October 21, 2003 Draft Agenda

The Committee recommended approval of the October 21, 2003 City Council agenda with five additions.

(2) Add New Items to October 14, 2003 Amended Agenda

The Committee recommended five additions to the October 14, 2003 City Council agenda.

(3) List of Reports Outstanding. Attachment: Report from the City Manager, dated October 7, 2003, transmitting outstanding reports for October 14, 2003.

The Committee noted and filed the City Manager's report listing one staff report outstanding for the October 14, 2003 Council agenda.

(c) Legislative Update

(1) State

There was no report.

(2) Federal

There was no report.

### **3.2 Report of the Rules Committee - Meeting of October 8, 2003 (Cont'd.) Vice Mayor Dando, Chair**

(d) Meeting Schedules

- (1) Adopt Proposed 2004-2005 City Budget Calendar. Attachment: Memorandum from Budget Director Larry Lisenbee, dated September 30, 2003, recommending adoption of the proposed 2004-2005 City Budget Calendar.

The Committee directed the Administration to develop a more meaningful partnership with employees/employee unions and with community groups during the budget process, and to specifically include employees on the flow chart for the Annual Budget Process (Attachment A to Mr. Lisenbee's memorandum submitted as a document filed for this item); the Committee recommended adoption of the proposed 2004-2005 City Budget Calendar.

- (e) The Public Record. Attachment: Memorandum from City Clerk Patricia L. O'Hearn, dated October 2, 2003, transmitting the items to Public Record for the period September 3-30, 2003.

The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees -There were none.

- (g) Rules Committee Reviews, Recommendations and Approvals

There were none.

- (h) Oral communications - None were presented.

- (i) Adjournment - The meeting was adjourned at 2:25 p.m.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, the Report of the Rules Committee and the Actions of October 8, 2003 were accepted. Vote: 10-0-1-0. Absent: Dando.

- (f) Appointment to Boards, Commissions and Committees

- (1) Request to waive Council Policy regarding appointment to Youth Commission. Attachment: Memorandum from Council Member Gregory, dated October 10, 2003, recommending adoption of said resolution. See Item 3.8 for Council action taken.

The Committee recommended an exception to Council Policy 0-4, Page B1, which states, "...no City Staff Member or Council Assistant shall be appointed to any City Board or Commission", to allow reappointment of District 7 Youth Commissioner, Erica Garcia, who is employed part-time as a LEARNS after-school site coordinator.



### **3.3 Report of the Making Government Work Better Committee – October 8, 2003 Council Member Campos, Chair**

Documents Filed: The Making Government Work Better Committee Report dated October 8, 2003.

- (a) Follow-up on Review of Effectiveness of Current City and Redevelopment Agency Community Outreach and Accessibility. Attachment: Memorandum from Assistant Executive Director Sharon Landers, dated October 1, 2003, transmitting Community Outreach efforts presentation.

The Committee accepted the Staff report, and requested that Staff return with an update on the Citywide Public Outreach Policy at the end of the fiscal year.

- (b) IT Major Projects Update. Attachment: Memorandum from Information Technology Planning Board, dated September 29, 2003, transmitting the Status Report on Major Information Technology Projects.

The Committee accepted the Staff report.

- (c) Auditor's Recommendations Follow-up report for Six Months Ending June 30, 2003. Attachment: Report from the Office of the City Auditor dated June 30, 2003.

The Committee accepted the Staff report.

- (d) City Clerk One-Stop Shop follow-up report. Memorandum from City Clerk Patricia L. O'Hearn, dated October 2, 2003, transmitting Use of Laptops in Council Meetings Report.

The Committee deferred this item to the November 12, 2003, Making Government Work Better Committee.

- (e) Comprehensive Annual Financial Report. Attachment: Memorandum from Director of Finance Scott Johnson, dated September 29, 2003, transmitting the Comprehensive Annual Financial Report dated June 30, 2003. See Item 3.7 for Council action taken.

The Committee accepted the Staff report.

- (f) School Crossing Guard Program Audit Report. Attachment: Memorandum from City Auditor Gerald Silva, dated October 1, 2003, transmitting the 2003-04 Crossing Guard Program Report.

The Committee accepted the Staff report, with the direction that the Auditor include an analysis of the current criteria for intersections qualifying for crossing guards.

**3.3 Report of the Making Government Work Better Committee – October 8, 2003  
Council Member Campos, Chair (Cont'd.)**

(g) Oral petitions

There were none.

(h) Adjournment

The meeting was adjourned at 5:10 p.m.

Discussion/Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed, and carried unanimously, the Report of the Making Government Work Better Committee, and the Actions of October 8, 2003 were accepted. Vote: 10-0-1-0. Absent: Dando.

**3.4 Adoption of a resolution calling for a Municipal Election to be held on March 2, 2004, for the purpose of electing a Council Member from Districts 2, 4, 6, 8, and 10, each for a full term beginning January 1, 2005 and ending December 31, 2008. (City Clerk)**

Documents Filed: Memorandum from City Clerk Patricia L. O'Hearn, dated October 10, 2003, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Williams, and carried unanimously, Resolution No. 71792, entitled: "A Resolution of the Council of the City of San José Calling and Giving Notice of a General Municipal Election to be Held in the City of San José on March 2, 2004, for the Purpose of Electing One Person Each from Council Districts Two, Four, Six, Eight, and Ten to the Council of the City of San José for Full Four-Year Terms; Requesting the Consolidation of Said Election with the State Direct Primary Election to be Held in Santa Clara County on March 2, 2004, Requesting the Board of Supervisors of the County of Santa Clara to Canvass the Returns of Said Election and To Permit the County Registrar of Voters to Render Certain Services to the City of San José Relating to the Conduct of Said Election; Establishing Fees for Candidates Statements and for Filing Notices of Intent to Circulate Petitions; and Directing that Certain Other Actions Be Taken With Regard to the Election", was adopted. Vote: 10-0-1-0. Absent: Dando.

**3.5 Adoption of a resolution authorizing the City Manager to enter into exclusive negotiations for thirty (30) days with the proposed new manager for the Hayes Mansion, Dolce International Holdings, Inc. ("Dolce") with the option to commence negotiations with Benchmark Hospitality in the event business terms are not reached with Dolce. CEQA: Not a Project. (City Manager's Office/Finance/Economic Development)  
(Deferred from 10/14/03 – Item 3.5)**

### 3.5 (Cont'd.)

Documents Filed: (1) Memorandum from Deputy City Manager Kay Winer, Director of Finance Scott Johnson, and Director of Economic Development Paul Krutko, dated October 9, 2003, recommending adoption of said resolution. (2) Supplemental Report from Deputy City Manager Kay Winer, and Director of Finance Scott Johnson, dated October 16, 2003, transmitting additional information. (3) Memorandum from Deputy City Manager Kay Winer, dated October 20, 2003, transmitting letter from Gene A. Keluche, Chairman and CFO of Native American Resorts.

Discussion/Action: Item 3.5 was heard concurrently with 3.6. Council Member Cortese expressed concern that besides a smooth transition, preservation of the property, and fair treatment for employees, is the incurred debt, and the probability of incurring more. He stated when the City Manager negotiates a final agreement it would be in the City's best interest to have an incentive provision in the agreement that states if the debt related to the transition is retired within a certain time frame fitting within the City's goal of 3 to 5 years, there would be a significant financial reward or incentive in that contract for the operator. The proposed new manager for the Hayes Mansion, Andy Dolce, Dolce International Holdings, Inc., stated he is very positive about the opportunity to structure an incentive program that will retire the short-term debt quickly. City Manager Del Borgsdorf stated the faster the debt is retired is beneficial to the City, and the new operator, allowing the City additional options, in terms of long-term strategy. Council Member Cortese remarked that should be included in the motion.

Council Member LeZotte commented Staff is aware the City of San José adopted an Environmentally Preferable Procurement Policy (EPP) in 2001, which the primary purpose is to minimize the negative environmental impacts of the City's activities by ensuring procurement of services, and products is accomplished in a manner that reduces toxicity, considers natural resources, materials and energy, and maximizes recycle ability. She stated recently this policy was included for the first time in a Request For Proposal, and brought forth a better vendor to the City. She pointed out as it relates to the Hayes Mansion, it would be helpful to learn about Mr. Dolce's environmental management program, and best practices in regard to housekeeping, such as what in-room initiatives the facility takes, what is the transportation alternative, and does the facility divert waste food into the community. She requested the City's EPP Policy be incorporated into the 30 day negotiations with Mr. Dolce, and into the management agreement, and that both become part of the motion. Mr. Dolce stated the length of stay at his facilities usually spans 3 to 5 days, there is a sign in each of the guest rooms letting the guest know sheets are not changed daily, soap is recycled, the facilities have programs providing food to the homeless and poor, and bus, van or limousine arrangements can be provided.

Council Member Williams stated the Hayes Mansion is uniquely placed in a community, and asked how Mr. Dolce deals with that type of issue. Mr. Dolce replied he sponsors movies, art fairs, and invites the local residents to become members of their fitness facilities. He stated in the brief analysis of the existing operations, he will look at a broader market for other types of meetings, and put the Hayes Mansion on a global

### 3.5 (Cont'd.)

distribution with major exposure internationally. He stated in the leisure market his staff would build spa packages as a retreat for a healthy weekend, and there is an opportunity to develop a club membership within the local community.

Council Member Reed asked Mr. Dolce what risks will his company be taking, and what are his expectations of the rewards and incentives. Mr. Dolce replied he believes his company can do a better job with the property cash flow, and hopefully there will be significant incentives for his company to make some additional money, other than base fees, which typically cover the operating costs. Council Member Reed asked Staff whether the City is expecting Mr. Dolce or any other operator, to put money into this deal or is the City planning to finance everything. Deputy City Manager Kay Winer replied this would be a management fee, not a lease or franchise, and the operator is not expected to put up-front capital. She explained Staff does not have an agreement yet, this is the authorization and negotiated agreement, with recommendations from Council today, for example, the incentive fee, the EPP Policy will be incorporated in the management agreement that Staff will bring back to Council in 30 days. Council Member Reed stated using the performance presented by Mr. Dolce, how much money will the City have to expend into the operations for the next few years. Deputy City Manager Winer replied approximately \$1.2 Million for the first year, and as the last half of the second year is reached there will be significant enough revenues coming in that there will not be a need to subsidize the operations with the letter of credit.

Council Member Reed pointed out in the transition plan, Staff is recommending setting up a line of credit with Comerica Bank for \$5 Million, and \$1.2 Million of that into the deal of operations for the first year, but sometime in the second year the City can stop drawing on the line of credit. Director of Finance Scott Johnson stated based on the performance projection Staff received from Mr. Dolce, there would be a net profit to the City in each year of the 5-year performance that Mr. Dolce provided. He stated the City's debt service payments are currently about \$2 Million a year, Staff took Mr. Dolce's performance projection, factored in what the City's debt service payments would be over the 5 year period, and made a projection on what those payments would be. He stated for the first year, Mr. Dolce's estimated performance is showing that after all the operating expenses of the Hayes Conference Center, in addition to his management fees, the City would receive about \$720,000 for the debt service payment next year, and Staff is estimating \$2 Million and proposing to fund that through the \$5 Million line of credit with Comerica. He stated in response to the repayment, Staff believes within three years the City would be able to repay that back. Council Member Reed declared to go from this year's loss of \$3.6 Million with the current operator to a positive operating cash flow in the first year, is no less than a miracle.

### 3.5 (Cont'd.)

Council Member Reed stated in regard to an Asset Management Committee, which is not unusual for the owners of properties to use to monitor operations, asked Mr. Dolce how he would feel about that, and is there some way the City can do this without interfering with his operations. Council Member Reed expressed concern the City did not learn the existing operators were in trouble until a year had elapsed, the City did not have audit rights to review the operations, and it has taken another year to take action. Deputy City Manager Kay Winer replied that Mr. Dolce has acknowledged it is typical to actually expect this oversight, and it will be a prescribed procedure that Staff will outline in the management agreement in a proactive manner.

Mayor Gonzales called for public testimony. Enrique Fernandez, and Jose Moreno, representing H.E.R.E. Local 19 spoke in favor of the issue, and William Garbett spoke in opposition to the issue. Council Member Cortese moved approval of the Staff recommendations to approve Items 3.5 and 3.6, directing Staff to make incentives for retirement of the short term debt a focal point of negotiations, to incorporate the EPP policy, that any draw downs on the revolving line of credit that has been established be reported by monthly statements to each Council Office so that the status of the balance of the line of credit could be monitored on a monthly basis. Council Member Chavez seconded the motion.

Council Member Reed stated opposition to the motion, and in terms of borrowing \$5 Million as a line of credit to cover the operating budget losses, is not in the best interest of the City.

Mayor Gonzales remarked sometimes it takes people from outside California to state that San José is a great community, and would be a good place to make an investment and own a business. On a call for the question, the motion carried unanimously, and Resolution No. 71793, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Enter into Exclusive Negotiations with Dolce International Holdings, Inc. to Manage the Hayes Mansion Conference Center", was adopted, with direction to Staff to: (1) Make incentives for retirement of the short term debt a focal point of negotiations; (2) Incorporate an Environmentally Preferable Procurement Policy (EPP) into the contract; (3) Ensure any draw downs on the revolving line of credit that have been established, be reported by monthly statements to each Council Office in order to monitor the status of the balance of the line of credit. Vote: 9-1-1-0. Noes: Reed. Absent: Dando.

### 3.6 **Approval of various actions related to a transition plan for the Hayes Mansion Conference Center.**

- (a) **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement by and among the City, Hayes Renaissance, L.P. and Network Conference Company setting forth the terms of the transition of the operation and management of the Hayes Mansion Conference Center to a new operator.**

*(Item continued on the next page)*

**3.6 Approval of various actions related to a transition plan for the Hayes Mansion Conference Center (Cont'd.)**

- (b) Adoption of a resolution authorizing the City Manager to negotiate and execute agreements related to the transition of the operation and management of the Hayes Conference Center:**
  - (1) A line of credit agreement in an amount not to exceed \$5 million and a term loan in an amount not to exceed \$2 million with Comerica Bank-California.**
  - (2) An agreement with Devcon Construction Incorporated to assume repayment of the principal of a loan made to Hayes Renaissance, L.P. in the amount of \$1.2 million on a subordinated basis from Hayes Mansion Conference Center net revenues; and**
  - (3) A temporary operating agreement with Hayes Renaissance, L.P. for the operation and management of the Hayes Mansion Conference Center until the new operator assumes management and at a cost not to exceed a monthly fee of \$15,000.**
- (c) Adoption of amendments to the 2003-2004 appropriation ordinance in the General Funds as follows:**
  - (1) Establish a Hayes Mansion Conference Center Line of Credit Security Earmarked Reserve in the amount of \$5,000,000; and**
  - (2) Decrease the Worker's Compensation/General Liability Catastrophic Earmarked Reserve in the amount of \$5,000,000.**

**CEQA: Not a project. (City Manager's Office/Finance/Economic Development  
(Deferred from 10/14/03 – Item 3.6)**

Documents Filed: (1) Memorandum from Deputy City Manager Kay Winer, Director of Finance Scott Johnson, Director of Economic Development Paul Krutko, and Budget Director Larry Lisenbee, dated October 9, 2003, recommending adoption of said resolutions and amendments to the 2003-2004 Appropriation Ordinance in the General Fund. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated October 16, 2003, transmitting proposed changes to the terms and conditions of the proposed line of credit with Comerica Bank.

Discussion/Action: See Item 3.5 for discussion and Staff direction. Mayor Gonzales called for public testimony. William Garbett spoke in opposition to the issue. Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried, Resolution No. 71794, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Hayes Renaissance, L.P. and Network Conference Company Setting Forth the Terms of the Transition of Operation and Management of the Hayes Mansion Conference Center to a New Operator"; Resolution No. 71795, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements Related to the Transition of the Operation and Management of the Hayes Mansion Conference Center"; and Ordinance No. 26999, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Monies in the General Fund for the Hayes Mansion Conference Center Line of Credit Security Earmarked Reserve; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. Vote: 9-1-1-0. Noes: Reed. Absent: Dando.

**3.7 Acceptance of the Comprehensive Annual Financial Report. (Finance)**  
**[Making Government Work Better referral 10/8/03 – Item 3.3(e)]**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated September 29, 2003, transmitting the Comprehensive Annual Financial Report Year Ending June 2003.

Discussion/Action: Director of Finance Scott Johnson gave a brief slide presentation of the Comprehensive Annual Financial Report. City Auditor Gerald Silva explained the City Auditor's role in this process and introduced Kevin O'Connor, Macias, Gni and Company, the outside auditor, gave a short overview of the scope of the audit services, and results of the audit. Upon motion by Council Member Chavez, seconded by Council Member Campos, and carried unanimously, the Comprehensive Annual Financial Report, was accepted. Vote: 10-0-1-0. Absent: Dando.

**3.8 Adoption of a resolution excepting District 7 Youth Commissioner Erica Garcia from City Council policy #0-4(B).**  
**[Rules Committee referral 10/15/03 – Item 3.2(f)(1)]**

Documents Filed: None.

Discussion/Action: Upon motion by Council Member Gregory, seconded by Council Member LeZotte, and carried unanimously, Resolution No. 71796, entitled: "A Resolution of the Council of the City of San José Excepting District 7 Youth Commissioner Erica Garcia from City Council Policy 0-4(B)", was adopted. Vote: 10-0-1-0. Absent: Dando.

**ECONOMIC & NEIGHBORHOOD DEVELOPMENT**

**4.3 Approval of a Disposition and Development Agreement (DDA) between the City of San José and Barry Swenson Builder (BSB), or its designated affiliate, for the development of the Sycamore Terrace Development, a 32-unit family development on 1.42 acres of City-owned property, located at the northeast corner of Almaden Expressway and Coleman Road. CEQA: Mitigated Negative Declaration, PDC 90-061. Council District 10. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated October 1, 2003, recommending approval of a DDA between the City of San José and Barry Swenson Builder. (2) Proofs of Publication of Notice of Public Hearing, executed on October 3, and October 10, 2003, submitted by the City Clerk.

#### 4.3 (Cont'd.)

Discussion/Action: Mayor Gonzales expressed, in Vice Mayor Dando's absence, her pleasure that this project is finally in front of the Council. He stated it has been a project in the making for about 10 years, and has developed into a housing opportunity, and Vice Mayor Dando is appreciative of everyone that has been involved. He pointed out the housing project has 32 townhouse units, with 17 affordable units. Director of Housing Leslye Corsiglia noted on Pages 4 and 5 of the Staff report it indicated there would be a .51-acre parcel that will be transferred to the Housing Department, and stated that transfer has already taken place.

Council Member Chavez asked if the covenant would be maintained for 30 years as affordable. Director of Housing Leslye Corsiglia replied it is actually 45 years, with the restriction that is placed on the property per State law, but that can be released through the equity share requirements. Council Member Chavez asked how in the resale process does Staff ensure that affordability stays in place. Director Corsiglia replied it remains affordable or until the new owner chooses to sell to a non-lower income or moderate-income household, the owner would pay back the amount of the assistance, plus a share of equity and the amount releases the affordability restriction. She stated that is the way all of the ownership projects work, and it is recorded against the property. Council Member Chavez asked if the City designs the agreements that are prepared as the City is a party in the agreement. City Attorney Richard Doyle replied the City prepares the initial agreements, but the restrictions are on the property, and it shows up on the title report. Council Member Chavez stated in a few of the City's earlier for sale properties there has been confusion or challenges with property owners not entirely understanding what their obligation is, and perhaps now Staff is better at writing these agreements, and asked if there is a new improved format. Director Corsiglia replied yes in the early days of the Housing Department and the Redevelopment Agency each deal was different, and now every affordable housing deal, as far as that equity share, is consistent. She stated at one point Staff returned to Council, and a policy was approved that allowed Staff to change those old deals that were confusing.

Council Member Reed asked if the City will have a bridge as part of the project which will essentially tie the trail in the park to the Santa Clara Valley Water District property to the north. Director Corsiglia replied yes, that is Staff's understanding of that item. Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the Disposition and Development Agreement between the City of San José and Barry Swenson Builder for the development of the Sycamore Terrace Development, a 32-unit family development on 1.42 acres of City-owned property, located at the northeast corner of Almaden Expressway and Coleman Road, was approved and its execution authorized. Vote: 10-0-1-0. Absent: Dando.



## **RECREATION & CULTURAL SERVICES**

### **5.1 Report of the All Children Achieve Committee – October 9, 2003 Council Member Yeager, Chair**

Documents Filed: The All Children Achieve Committee Report dated October 9, 2003.

- (a) Youth Commission Report. Attachment: Memorandum from Chair Erica Garcia, dated September 25, 2003, transmitting the Youth Commission Bi-Monthly Report.

The Committee accepted the report.

- (b) Presentation of the FY 03-04 Youth Commission Work Plan. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 25, 2003, recommending approval of the Youth Commission Strategic Work Plan for the FY 2003-2004, and transmitting the report.

The Committee accepted the report.

- (c) Early Childcare Update on Integration of Quality Standards. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 25, 2003, transmitting the Early Care and Education Update on the Integration of Quality Standards.

The Committee accepted the report.

- (d) Oral petitions

There were none.

- (e) Adjournment

The meeting was adjourned at 2:15 p.m.

Discussion/Action: Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and carried unanimously, the Report of the All Children Achieve Committee and the Actions of October 9, 2003, were accepted. Vote: 10-0-1-0. Absent: Dando.

### **5.2 Approval of the Fowler Creek Park Master Plan Update. CEQA: Resolution No. 63179, PP03-09-288. Council District 8. (Parks, Recreation & Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated October 1, 2003, recommending approval of Fowler Creek Park Master Plan Update.

## 5.2 (Cont'd.)

Discussion/Action: Council Member Cortese pointed out that his parents, Dominic and Suzanne Cortese, were in the audience. Mayor Gonzales called for public testimony. Hai Chang, Friends of Fowler Creek Park spoke in favor of the issue. Council Member Cortese moved approval of the Staff recommendation. Council Member LeZotte seconded the motion. Council Member Cortese acknowledged the Parks Recreation and Neighborhood Services Department, Hai Chang, who formed a non profit organization which is now eligible for grant funding; the Evergreen Hills Resident Action Group which formed in a negative way a few years ago regarding the Campus Industrial Zoning issue, but came together for this project in a positive way, representing approximately 600 families in the area. On a call for the question, the motion carried unanimously, and the Fowler Creek Park Master Plan Update was approved. Vote: 10-0-1-0. Absent: Dando.

## TRANSPORTATION SERVICES

### 6.1 Report of the Building Better Transportation Committee – October 6, 2003 Council Member Cortese, Chair

Documents Filed: The Report of the Building Better Transportation Committee dated October 6, 2003.

- (a) Expansion and Improvement of Transit and Transportation Systems
  - (1) Status Report on the Bay Area Rapid Transit (BART) Project. Attachment: Memorandum from Director of Transportation James Helmer, dated September 10, 2003, transmitting the Bart Update.

The Committee approved the report, with direction to provide a brief update at the October 21, 2003 Council Meeting.

- (b) Traffic Relief/Safe Streets
  - (1) No items

- (c) Supporting Smart Growth
  - (1) Presentation on the cumulative Land Use/Transportation General Plan changes. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated September 24, 2003, recommendation acceptance of the Land Use/Transportation Status Report.

The Committee accepted the report.

**6.1 Report of the Building Better Transportation Committee – October 6, 2003  
Council Member Cortese, Chair (Cont'd.)**

(d) Regional Relationships/Funding/Policy

- (1) Update on State, Federal, and Local Legislative. Attachment: Memorandum from Director of Transportation James Helmer, and Director Intergovernmental Relations Betsy Shotwell, dated September 19, 2003, transmitting the ABAG/MTC Task Force Legislative Report.

The Committee accepted the report.

- (2) Update on the Santa Clara Valley Transportation Agency (VTA), Valley Transportation Plan (VTP) 2030 Roadways. Attachment: Memorandum from Director of Transportation James Helmer, dated September 22, 2003, transmitting the VTP 2030 Update.

See Item 6.2 for Council action taken.

The Committee accepted the report, with direction to “cross reference” this item for full Council action on October 21, 2003, and for the Council Members to forward any additional comments to the Director of the Department of Transportation.

- (e) Oral petitions - There were none.

- (f) Adjournment - The meeting was adjourned at 3:05 p.m.

Discussion/Action: Council Member Cortese asked Staff to give an update on the BART Policy Advisory Board actions that were taken recently. Director of Transportation James Helmer stated the BART Policy Advisory Board met on October 6, 2003, and the Valley Transportation Agency (VTA) Staff recommended two additional alternatives called Minimum Operating Segments for the Federal Transit Administration’s consideration through the environmental review process. He stated taking public testimony over the last couple of months has allowed the Federal Transit Agency to look at different alternatives. He stated one alternative does not reduce stations; it focuses on the number of vehicles being purchased, the amount of maintenance at facilities, and core service improvements in BART’s main line. He stated the other alternative looks at the possible reduction of two BART Stations in Phase 1, at Berryessa, and the Civic Plaza, San José State University locations. He stated the Policy Advisory Board accepted VTA’s recommendations, and the final analysis will be resubmitted to the Federal Transit Agency in December 2003. He stated the policy would be reviewed during the EIR process, and re-released to the general public in the spring of 2004. Upon motion by Council Member Cortese, seconded by Council Member Chavez, the motion carried unanimously, and the Report of the Building Better Transportation Committee and the Actions of October 6, 2003, were accepted. Vote: 10-0-1-0. Absent: Dando.

**6.2 Acceptance of staff's report on the review of eligible Freeway, Expressways and Intelligent Transportation Systems (ITS) Projects for Valley Transportation Plan 2030. (Transportation)**  
**[Building Better Transportation Committee referral 10/6/03 – Item 6.1(d)(2)]**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated October 16, 2003, recommending acceptance of the staff report.

Discussion/Action: Council Member LeZotte, referring to Page 2 on Attachment A, the Local Streets and County Roads Program, Items 1 through 37, asked if those were in any order of priority, because the list that was brought to the Committee had Item 37 as Item 19. Director of Transportation James Helmer replied this is the list of candidate projects that was reviewed by the Building Better Transportation Committee in September, reviewed by the City Council on October 6, 2003, and are not in a priority order at this time, with the final prioritization occurring at the City Council meeting in December.

Council Member Williams stated in reference to the livability, what does that mean as it relates to the freeways, because when driving in the City of San José, the freeways are noticeably filthy and littered with garbage. Director Helmer replied that Staff concurs and is constantly contacting CALTRANS in that regard. He stated Staff is researching comparisons around the region, along freeways and landscaped areas, and making every effort to obtain further maintenance resources applied to Santa Clara County.

Council Member Cortese stated that Capital, Yerba Buena, and Tully are now being referred to in the VTP as the 101 Corridor project, and asked is Staff keeping these separate. Deputy Director of Transportation Hans Larsen replied the way they are listed as individual projects is how they are currently listed in the VTA's VTP 2020 Master Plan. He stated three projects, the widening of 101 from Interstate 280 to Capital, Yerba Buena, as well as the two interchange upgrades are being looked at as the 101 Corridor. He stated Staff is listing them separately to provide opportunities to phase the projects, but the strategy will be discussed at the Building Better Transportation Committee's meeting, whether they go forward as one project or separate projects with different schedules. Council Member Cortese expressed concern that it was important to keep them packaged together, as Tully had been grandfathered-in the regional plan for a longer period of time, and the other projects in that area were essentially bootstrapped on to Tully, and he did not want to do anything on the record that would disrupt that later on. Council Member Williams, referring to the Branham Pedestrian Overcrossing at Highway 101, asked if that is different from the freeway. Deputy Director of Transportation Hans Larsen replied the Branham Lane Overcrossing at Highway 101 is included in the Bicycle Pedestrian Program, which will be discussed with the Building Better Transportation Committee at next month's meeting.

Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, the Report on the review of eligible Freeway, Expressways and Intelligent Transportation Systems (ITS) Projects for Valley Transportation Plan 2030, was accepted. Vote: 8-0-3-0. Absent: Campos, Dando, Reed.

## **ENVIRONMENTAL & UTILITY SERVICES**

- 7.1 Approval of the fourth amendment to the Agreement for Engineering, Construction, and Construction Services by and between City of Santa Clara and the City of San José for implementation of portions of the South Bay Water Recycling Program, increasing the amount of compensation by \$2,700,000, for a total agreement amount not to exceed \$27,600,000, with an option to increase the agreement amount to \$30,000,000 subject to appropriation of funds, for recycled water projects within the City of Santa Clara. CEQA: Resolution No. 64667 (PP# 91-04-090) and Addenda Numbers 6, 7, 9, and 10 adopted by the Santa Clara City Council. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated October 1, 2003, recommending approval of the fourth amendment to the said agreement. (2) Letter from the Treatment Plant Advisory Committee, dated October 9, 2003, stating concurrence with the Staff recommendation.

Discussion/Action: Upon motion by Council Member Chavez, and seconded by Council Member Cortese, the fourth amendment to the Agreement for Engineering, Construction, and Construction Services by and between City of Santa Clara and the City of San José for implementation of portions of the South Bay Water Recycling Program, increasing the amount of compensation by \$2,700,000, for a total agreement amount not to exceed \$27,600,000, with an option to increase the agreement amount to \$30,000,000 subject to appropriation of funds, for recycled water projects within the City of Santa Clara was approved, and its execution authorized. Vote: 9-0-2-0. Absent: Dando, Reed.

## **AVIATION SERVICES**

- 8.1 (a) Adoption of an urgency ordinance amending Title 25 of the San José Municipal Code by adding a new Chapter 25.03 to amend and restate the curfew hours and aircraft restrictions provisions of the City Of San José Airport Noise Control Program, and adoption of an urgency ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to designate violations of Chapter 25.03 as infractions.**
- (b) Adoption of a resolution amending Resolution No. 57211 to amend and restate the curfew hours and aircraft restrictions provisions of the City Of San José Airport Noise Control Program.**
- (City Attorney's Office)**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated October 16, 2003, recommending adoption of said urgency ordinance and resolution. (2) Letter from Citizens Against Airport Pollution, dated October 20, 2003.

## 8.1 (Cont'd.)

Discussion/Action: City Attorney Richard Doyle presented a comparison of current airport curfew provisions with proposed curfew provisions. Mayor Gonzales stated without this ordinance the City has the potential of losing the curfew program, which would be detrimental to the efforts to have a state of the art airport, and to be a good neighbor allowing the people of San José to have uninterrupted sleep during curfew hours.

Council Member Yeager expressed concern regarding the short time frame involving public review and comment of this issue, and asked why Staff is moving so quickly. City Attorney Richard Doyle replied in April 2002 the City Council adopted a moratorium on granting further exemptions to any aircraft coming in that did not otherwise qualify under the curfew program. He stated after 18 months, the moratorium had been extended three times, it expires today, and there is a need to take action. Council Member Yeager asked for an explanation of the 89-decibel (dB) threshold, including the weight base and the noise that it generates. City Attorney Doyle replied Staff wanted to protect the existing noise contour and not adversely impact the neighborhoods that surround the airport. He stated 89 dB essentially preserves the same contours with no substantial impact on the existing noise contours, and the Federal Aviation Administration (FAA) and Staff both agreed replicates the current program in terms of noise. Council Member Yeager stated the fact is the FAA would not allow the City to do a more restrictive curfew so Staff had to replicate what currently exists. City Attorney Doyle replied there are two Federal laws in place, the Airport Noise and Capacity Act of 1990 (ANCA), which prohibit the City from adopting more restrictive curfew programs. He stated the City is grandfathered-in under its old program, and cannot change the existing program but is allowed to modify it, and this modification qualifies under ANCA posing no problem with Federal law. He stated the FAA grants assurances that prohibit unjust discrimination, and the City cannot discriminate against any type of carrier, commercial or general aviation cargo. He stated the FAA in reviewing the proposal, was much more receptive to a program which did not look at noise in a decibel level as opposed to types of carriers.

Council Member Yeager pointed out for everyone who has been dealing with airport issues for a long time, if the City did want to change the curfew, the City would have had to apply for a Part 161, which the FAA has not granted to any airport in any city in the United States. City Attorney Doyle remarked in 13 years there has not been a Part 161 approved, and Direction of Aviation Ralph Tonseth agreed. Council Member Yeager stated given the current Federal law is it a fact that the City could not be more restrictive than what it currently has with the contour map as an 89 dB. City Attorney Doyle replied the City would need the consent of the FAA, under both Federal and Local law. Council Member Yeager stated regarding the grandfathered stage three jets currently allowed to operate under the curfew hours, the City does not have the ability to change that even if the curfew remained the same, they would still be allowed. City Attorney Doyle stated these planes are currently allowed to come in, to prohibit them would make it more restrictive, and the City would run afoul of Federal law.

## 8.1 (Cont'd.)

Council Member Yeager pointed out the City has received a number of questions from Citizens Against Airport Pollution about the type of exemptions that are being allowed or whether they are grandfathered in. City Attorney Doyle stated the grandfathered planes that currently come in weigh less than 75,000 pounds, and the City has to allow them in order to qualify under ANCA, and the one exemption to the program is the Wing & A Prayer Exemption, which would qualify under this program at 86 dB. Council Member Yeager stated in regard to voluntary compliance agreements, which the City has with a number of airlines in the past, Staff has asked them to voluntarily agree to the agreements not to fly in the curfew hours. He expressed concern that a number of flights, particularly Delta and United, could conceivably have a 6:00 a.m. flight, and yet those are airlines have already signed this voluntary agreement, and asked whether that will give the City added protection. City Attorney Doyle replied Staff has had mixed success on Voluntary Compliance and Agreements, but continues with each lease or new operator to negotiate for compliance with the program. He stated the most recent agreements contemplate compliance with curfew and enforcement. Council Member Yeager stated the City understands the public's concerns that there might be one or two flights coming in during the curfew hours. He stated in the past, the City has done whatever it can to protect the curfew hours, and has been able to come up with this agreement with a number of safeguards which will make this a very effective curfew program.

Mayor Gonzales called for public testimony. William Garbett, Don Simpson, Airport Commission, Ransom Fields, and Martin Delson spoke on the issue. Council Member Chavez moved approval of the Staff recommendation. Council Member Yeager seconded the motion. On a call for the question, the motion carried unanimously, and, Ordinance No. 27000, entitled: "An Urgency Ordinance of the City of San José Amending Title 25 of the San José Municipal Code by Adding a New Chapter 25.03 to Amend and Restate the Curfew Hours and Aircraft Restrictions Provisions of the Norman Y. Mineta San José International Airport Noise Control Program and Setting Forth the Facts Constituting Such Urgency"; and Ordinance No. 27001, entitled: "An Urgency Ordinance of the City of San José Amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code, Which Lists All Infractions, To Add Violations of Chapter 25.03, the Airport Curfew, as Infractions, and Setting Forth the Facts Constituting Such Urgency"; and Resolution No. 71797, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 57211 to Amend and Restate the Curfew Hours and Aircraft Restrictions Provisions of the Norman Y. Mineta San José International Airport Noise Control Program", were adopted, with Staff directed to: (1) Re-assess the customer airport noise complaint feedback line in order to make it more user friendly; (2) Report back in a year as to the overall effect of the new curfew; (3) Work with the new airlines interested in signing new contracts with the City of San José, and ask if the airline would voluntarily comply with the curfew hours from 11:30 p.m. to 6:30 am. Vote: 10-0-1-0. Absent: Dando.

## **NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS**

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9481	N/S of Aborn Ave., E/S of Murillo Ave.	8	Citation Homes	15 units	SFDR

## **OPEN FORUM**

- (1) Katarina Dunmar asked how a citizen places an item on the Council Agenda.
- (2) Ross Signorino stated the City of San José is the healthiest and greatest City in the United States.
- (3) Xavier Campos thanked the Mayor and City Council for their support of San José Best.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 3:49 p.m.



## RECESS/RECONVENE

The City Council recessed at 4:42 p.m. from the Joint City Council/Redevelopment Agency Board/Financing Authority Meeting, and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Dando.

## CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the MACSA Youth Center Eagle Warrior Athletics 19 and Under, 16 and Under, 14 and Under, 12 and Under, 12 and Under Girls, and 10 and Under Futsal Teams. Each of these teams placed at least third, including some National Championships at the 2003 National Futsal Championships in Anaheim, CA. (Campos)**  
**(Deferred from 9/16/03 – Item 1.1 and 10/7/03 – Item 1.1)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Member Campos to present commendations to the MACSA Youth Center Eagle Warrior Athletics for several age categories. Council Member Campos introduced Mario Gonzalez, coach for the teams. The youngsters of MASCA Youth Center won first and second place in the State, and won three National championships in the sport of Futsal (indoor soccer). Mayor Gonzales, and Council Member Campos, on behalf of the Council Members recognized and commended the players, the coach and the families of the MACSA Youth Center Eagle Warrior Athletic Teams for their outstanding achievements.

- 1.2 Swearing in of Youth Commissioners for Districts 1, 3, 5, 7, and 9. (Mayor)**

Documents Filed: Memorandum from City Clerk Patricia L. O'Hearn, dated October 16, 2003, listing the Youth Commissioners to be appointed and sworn in during the October 21, 2003 evening Council Meeting.

Discussion/Action: Council Member LeZotte introduced Christina Liu, a Sophomore at Lynbrook High School, who is studying Chinese at De Anza College, has performed over 350 hours of community service through Girl Scouts, and Young City Heroes; she has restored habitats, worked in soup kitchens, removed graffiti, and painted murals at low income schools. Council Member Chavez introduced Adan Lupercio, a member of the Washington United Youth Center Advisory Council, a Washington Youth Volunteer Group Member, a Washington Area Community Coalition Member, who has had 4 years of involvement with his neighborhood, and started "Teens Engaged to Enhance Neighborhood Services." Council Member Campos introduced Carlota Montes, a Senior

## 1.2 (Cont'd.)

Honor Student at Mt. Pleasant High School, who is the President of the Latinos Student Union, representative of the East Side Union District, and is editor of her school newspaper. Council Member Gregory introduced Erica Garcia, who is currently the Chair of the current Youth Commission, serving for the past 4 years; she is committed to ensuring that young people have a voice in San José. Council Member Chirco introduced Megan Riley, a Sophomore at Branham High School, who is active in the Octagon Club, Second Harvest Food Bank, Sacred Heart, Adopt a Creek, and Key Club, and she feels the Youth Commissioner's job is to inform the community and focus on youth involvement. City Clerk Patricia L. O'Hearn swore in each of the nominees.

## 1.3 **Presentation of a commendation to the Avitia Family for being the Hispanic Foundation of Silicon Valley 2003 La Familia Award winner. (Reed/Mayor)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Member Reed to commend the Avitia family for receiving the prestigious La Familia Award. Mayor Gonzales explained that the annual Hispanic Charity Ball, is an opportunity to bring the Hispanic and Non-Hispanic community together to raise money for a variety of good community causes and organizations, and during that dinner, a family is recognized that best exemplifies outstanding community work. Mayor Gonzales, and Council Member Reed, on behalf of the Council Members recognized and commended Consuelo and Carlos Avitia, and their daughters Sonia and Cindy, for their outstanding personal, and professional contributions to improve the quality of life for the children and families of the San José community. Consuelo Avitia, a member of the City Clerk's Office, accepted the commendation from Mayor Gonzales.

## 1.4 **Presentation of a commendation to teacher Larry Statler for his innovation in creating the Discovery Program, a successful collaboration between special and general education; and for his induction into the prestigious National Teachers Hall of Fame. (Williams)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Member Williams to commend and recognize Larry Statler for his contributions to the community spanning over 30 years. Mr. Statler's specialty is special education, and he is outstanding in his profession. He has been inducted in the National Teacher's Hall of Fame, which includes only 35 individuals nationally. Council Member Williams stated he had the opportunity to visit Mr. Statler's classroom, to observe how Mr. Statler and the general education teachers work together, and how the children benefit from that collaboration. Mayor Gonzales, and Council Member Williams, on behalf of the Council members, recognized and commended Mr. Larry Statler for his exemplary dedication to the young people of San José, his leadership in classroom innovation, and his distinction at the forefront of educators in America.

## TRANSPORTATION SERVICES

- 6.3 (a) PUBLIC HEARING on the approval of a freeway agreement with the State of California.**  
**(b) Adoption of a resolution authorizing the City Manager to negotiate and execute the freeway agreement with the State of California's Department of Transportation for the Route 880 at Coleman Avenue Interchange Project.**  
**CEQA: Resolution No. 71448, PP03-02-071. Council District 3. (Transportation)**

Documents Filed: (1) Memorandum from Director of Transportation James Helmer, dated October 1, 2003, recommending conducting a public hearing, and adoption of said resolution. (2) Proof of Publication of Notice of Public Hearing, executed on October 10, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the Public Hearing on the approval of a freeway agreement with the State of California. William Garbett, and Roy Hifai, Thrifty Car Rental spoke in opposition to the issue. Council Member Chavez moved approval of the Staff recommendation. Council Member LeZotte seconded the motion.

Council Member Chavez asked if Staff had been collaborating with the Director of Aviation Ralph Tonseth about the artistic additions. Deputy Director of Transportation Hans Larsen replied the Transportation Staff has been working closely with the Airport Staff on the aesthetic elements of the 880/Coleman interchange, and one of the directions from Council was to look at opportunities to enhance this location as a gateway. He stated Staff has had meetings with Council Member Chavez and the Mayor's office in this regard, and the urban design architect working on the 880/Coleman project is the same one working on the Airport Master Plan, in order to achieve that integration. He stated Council Member Chavez' comments were passed to him, and Staff would continue to pull both of these together and work collaboratively. Council Member Chavez remarked that the architect is excellent, and while Staff may be communicating that coordination, the architect believes they were two separate projects. City Manager Del Borgsdorf stated there is an Airport Steering Committee, which deals solely on the type of issue Council Member Chavez identified. He stated he chairs the Committee, which meets every two weeks, and also attending are Director of Transportation James Helmer, the Finance Director, the City Attorney's office, the architectural teams, the Aviation Director, and Staff would put this coordination issue on the next meeting's agenda. Council Member Chavez declared she is particularly interested in that from an aesthetic perspective, and requested at some point a member from that committee report back to the Council or her office.

Council Member Cortese, and Council Member Chavez asked to have the airport transportation issues placed on the Building Better Transportation Committee work plan for January 2004. On a call for the question, the motion carried unanimously, the public hearing was closed, and Resolution No. 71799, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute the Freeway Agreement with the State of California Department of Transportation for the Route 880 at Coleman Interchange Project", was adopted. Vote: 10-0-1-0. Absent: Dando.

## **PUBLIC HEARINGS**

City Clerk Patricia L. O'Hearn read the requests for continuance of the applications. Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the below noted continuances were granted. Vote: 10-0-1-0. Absent: Dando.

- 11.1 PUBLIC HEARING on approval of an ordinance amending Chapter 20.70 of Title 20 of the San José Municipal Code by modifying the provisions of the Downtown Zoning Regulations. CEQA: Resolution No. 65459, PP03-05-169. (Planning, Building, and Code Enforcement)  
(Continued from 6/3/03 – Item 11.3 et al., and 9/30/03 – Item 11.1)**

Documents Filed: None.

Discussion/Action: Item 11.1 was continued to November 18, 2003.

- 11.3 PUBLIC HEARING ON APPEAL of the Planning Commission's decision to approve, with standard and special conditions, a Conditional Use Permit to allow an addition to an existing public utility facility (San José Water Company) located on the northwest corner of San Tomas Expressway and Williams Road in the R-1-8 Residence Zoning District on a 17 acre site. The proposed addition consists of two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock. (San José Water Company, Owner/Developer). CEQA: Exempt, CP03-009. Director of Planning, Building and Code Enforcement recommends upholding the decision of the Planning Commission to approve.  
CP 03-009 - District 1  
(Continued from 6/17/03 – Item 11.3 et al., and 9/30/03 – Item 11.2)**

Documents Filed: None.

Discussion/Action: Item 11.3 was continued to November 4, 2003.

- 11.4 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING** of the property located at the northwest corner of Hillsdale Avenue and Almaden Expressway (1175 Hillsdale Avenue), from CO Commercial Office and R-1-8 Residence Zoning Districts to A(PD) Planned Development Zoning District to allow (1) renovation of an existing two-story, 12, 250 square foot classroom building for private instruction and dormitory uses for approximately 75 students at an existing church, (2) replacement of an existing 176 space surface parking lot at the corner of Foxworthy Avenue and Almaden Expressway with a ball field and a 1,200 square foot modular building (no on-site outdoor lighting or PA system), and (3) addition of new landscaped areas and other minor site plan changes on a 10.4 acre site. (Calvary Chapel of San José, Owner/ Developer). CEQA: Exempt. Director of Planning, Building, and Code Enforcement and Planning Commission recommend approval (7-0-0).

**PDC 03-027 - District 9**

(Continued from 9/16/03 – Item 11.5)

Documents Filed: None.

Discussion/Action: Item 11.4 was continued to November 4, 2003.

- 11.6 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING** of the property located at the east side of Bird Avenue, approximately 490 feet northeasterly of Snyder Avenue (1023 Bird Avenue), from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District, to allow a 530 square foot, half-story living area in an existing accessory structure in conjunction with an existing single-family residence on a 0.15 gross acre site. (Stanley M. Davis et al. Owner/Developer). CEQA: Exempt.

**PDC 03-060 - District 6**

Documents Filed: None.

Discussion/Action: Item 11.6 was continued to November 18, 2003.

- 11.8 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING** of the property located at the southeast corner of East Virginia Street and South 5<sup>th</sup> Street (250 E. Virginia Street), from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 170 single-family attached residences with underground parking on a 3.9 gross acre site. (250 E. Virginia, LLC, Owner). CEQA: Mitigated Negative Declaration. SNI: Spartan/Keyes.

**PDC 03-022- District 3**

Documents Filed: None.

Discussion/Action: Item 11.8 was continued to November 4, 2003.

- 11.9 PUBLIC HEARING ON DIRECTOR-INITIATED CONVENTIONAL REZONING** of the property located within the area generally bounded 4<sup>th</sup> Street, Interstate 280, State Route 87 (Guadalupe Parkway), and Bassett Street, from CG General Commercial, R-M Multiple Residence, R-2 Two-Family Residence, LI Light Industrial Districts to DC Downtown Commercial District and DC-NT 1 Downtown Commercial-Neighborhood Transition 1 Districts, to allow mixed use, commercial, and residential uses on approximately 389 gross acres. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). (Planning, Building, and Code Enforcement)  
**C 03-072 - District 3**

Documents Filed: None.

Discussion/Action: Item 11.9 was continued to November 18, 2003.

- 11.2 PUBLIC HEARING ON APPEAL** of the Planning Commission's decision to deny a Conditional Use Permit and ABC Exception for a project located on the east side of North Capitol Avenue, approximately 1,200 feet northerly of McKee Road, on a 8.39 gross acre site in the CG Commercial Zoning District. The proposed project is the off-sale of alcohol at an existing Target Retail Store. (Target Corporation, Owner/Developer). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends overturning the decision of the Planning Commission to deny.  
**CP 03-002 & ABC 03-002 - District 5**  
**(Continued from 6/17/03 – Item 11.2 and 8/19/03 – Item 11.2)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-002/ABC 03-002, dated September 12, 2003, recommending approval of the Conditional Use Permit with conditions. (2) Proof of Publication of Notice of Public Hearing, executed on June 3, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Appeal of the Planning Commission's decision to deny a Conditional Use Permit and ABC Exception for the subject project. Beth Aboulafia, Hinman & Carmicheal, representing the applicant Target Corporation, spoke in regard to overturning the decision to deny. Dr. Aurora Quevedo, Sheppard Middle School, Helen Garza, Plata Arroyo Neighborhood Association, and Feliz Alvarez, ARAC, spoke in favor to deny the appeal. Beth Aboulafia, Hinman & Carmicheal, in response to the speakers, stated the comments that were heard are directed to general societal problems associated with alcohol abuse.

## 11.2 (Cont'd.)

Council Member Campos remarked that in the Staff memorandum, she did not see anything that specifically states or defines a policy on how Staff determines public convenience or necessity, and asked for an explanation. Director of Planning, Building and Code Enforcement Stephen Haase replied the Staff memorandum referenced in the case of over-concentration of crime and/or licenses, Staff relies upon the Police Department's evaluation based on the potential for crime for that particular user and site. He stated Staff acknowledges the criterion has not been defined descriptively, as there is judgment involved. Council Member Campos declared in the memorandum from the Police Department it states San José is 20% over the average crime rate in that particular census. Director Haase replied that is correct, it is over-concentrated, and the Police Department evaluates the individual use for the potential contributing additionally to crime, and in their evaluation they did not see that this type of use of the Target Store would have any impact on increasing the crime rate, as that is their primary concern, and Staff accepts the Police Department's professional judgment.

Council Member Campos remarked if the State Department of Alcohol and Beverage Control (ABC) states it is the City's responsibility to find a public convenience or necessity, asked whether Staff took the opportunity to actually hold a community meeting to find out if this was a public convenience or necessity within that community. Director Haase replied at this point the City's public outreach policy was limited to Staff noticing the public for this particular project but Staff did not conduct a community meeting. Council Member Campos declared according to statistics from the ABC Data Analysis Unit there are three active licenses, and by adding one more, the City is clearly creating an over-concentrated census tract. Director Haase replied that is correct, the one additional license would create a condition of over-concentration for that census tract primarily based upon the crime rate. He stated a large retailer does not contribute to an increase in crime rate in the Police Department's professional judgment. Council Member Campos asked if Staff just disregarded the State of California ABC Standards when they stated this is considered an over-concentrated area, and without involving the community in Staff's decision. Director Haase replied that is not what Staff was trying to represent, as the State identifies that a license in an area of over-concentration would need to file for an Exception Permit, and that the findings of need and necessity would have to be made. He stated there is a provision even if there is over-concentration to still evaluate the application, and review if the City could make those findings and use the decision makers to support those findings. He stated Staff did not ignore the State law, because the State law provides that avenue for the Exception Permit with respect to the community. He remarked he understood the concerns about conducting the community meeting, and does not see that in the Staff report that the meeting occurred.

## 11.2 (Cont'd.)

Council Member Campos stated there should have been a public meeting in the community before Staff made the final recommendations to the Planning Commission. Director Haase replied when Staff makes judgments for projects and communities, Staff looks at applying certain rules or reviewing statistics, and while public opinion is very important, Staff wants to make sure it uses a level of objective criteria, and currently Staff relies on the Police Department.

Council Member Campos pointed out when the Planning Commission reviewed this, there were four licenses, and according to the criteria of the ABC liquor license, found that three were able to move forward and one was not because of the over-concentrated area. Director Haase stated in reference to the Planning Commissioner portion, there was public testimony and the Planning Commission did look at the issue of concentration, and they were also concerned about over-concentration in the census tract adjacent to this census tract, and focused on that as an additional issue. He stated the Police Department's memorandum substantiates the census tract adjacent to this census tract is over-concentrated, and provides information on other adjoining census tracts which were not considered in the overall analysis from a standpoint of the concentration in a larger geographic area where there are some tracts that are under, and have fewer licenses as well, but they do focus on those particular issues as referenced in the Staff report.

Council Member Campos moved to deny the appeal. Council Member Chavez seconded the motion. Council Member Campos stated Staff did not follow criteria that would allow the best decision for the public's well being, and in the future, Staff should work diligently at reviewing the ABC criteria, how it is implemented so the City does not make a decision internally without community input, when talking about public convenience and necessity, especially alcohol.

Council Member Yeager expressed concern that there was not a community meeting held to talk about this issue, and that it appears the City does not have a general policy to inform the community if someone wants to add a use to their Conditional Use Permit. Director Haase replied the current public outreach policy does not require that, and Staff is discussing revisions to that policy, to review the more significant projects early in the process in order to have the community meeting. Council Member Yeager pointed out it makes sense for the applicant to want to obtain the community's input, and asked if Staff looks at the surrounding census tracts to determine if there are other over-concentration of uses. Director Haase stated Staff follows the State Law that focuses on the individual census tract, and information received from the Police Department for that particular census tract, and adjacent census tracts. He stated in this case, the addition of one more license did not render the census tract over-concentrated although the census tract to the south is over-concentrated. Council Member Yeager stated all Council Districts have areas where there is concern about yet another use, and even though there might be one census tract that is not over-concentrated, there is an obligation to look at the surrounding area, and it appears Staff is not allowed to do that. He stated policies are good, but the people are more important, and how any sort of use is going to affect an area has to be paramount.



## 11.2 (Cont'd.)

Council Member Chirco remarked that Staff's recommendation is based on a policy the City issued previously for the applicant, and the applicant has the right to appeal to the Council, and as such the standard needs to be the concentration as defined by the census tracts. She stated support for the motion to deny, that the Conditional Use Permit does create an over-concentration in this particular census tract.

Council Member Reed declared given the fact that this is an over-concentration by State law based on a crime statistic, and would become an over-concentration by City standards if it is adopted, is it convenient or necessary to have another licensee there, that is the finding Council has to make. He stated he cannot see there is a necessity for another liquor license, and whether or not it is more convenient to pick up a bottle of wine at Target or Albertson's, he cannot make the finding and will support the motion to deny.

Council Member Cortese expressed concern of the proximity of this Target store to the Sheppard Junior High School. He pointed out the report shows the shopping center space is anchored by an Albertson's with Target at the other end, and the Target is closer to school than it is to the Albertson's Store by 150 feet. He stated the area behind, and east of the Target abuts up to the fields, and part of the open space of the school, which is already a loitering area. He remarked when the fact that the census tract is already over-concentrated, from a technical standpoint and proximity to the school, it is hard to overcome that, and he will support the motion to deny.

Council Member LeZotte, in support for the motion to deny, stated the issues with regard to notice, are issues that Staff is looking at now based upon the previous discussion of the gas station ordinance.

Council Member Gregory stated support for the motion to deny. He stated in regard to census tracts that are saturated, asked what legislation or policies is the City following. Director Haase replied the State Bill is what the Staff looks to as legal guidance in reviewing the issues of crime or license over-concentration, and that is applied as Staff looks at specific census tracts for over-concentration of crime and licenses. He stated there is no provision in the State law that states a City should consider the surrounding census tracts or average them. City Attorney Richard Doyle clarified the State law defines undue concentration in two ways, one, in a crime-reporting district a rate of 20% or greater, and two, is the census tract, which is the number of actual licenses in that census tract area. He stated either instance, findings are undue concentration under each definition. He stated Council Member Reed accurately pointed out that based on the crime statistics alone, the definition of undue concentration is met, and that is why the applicant is seeking an exemption. He stated starting with the basic rule that there is an undue concentration under State Law, now it is up to Council to overrule that by making the finding of public convenience and necessity. Council Member Gregory asked what prohibits Council from ruling against adding a new license only because it is too close in proximity to another census tract that is already over-saturated. City Attorney Doyle replied the City is preempted under State law when it comes to the regulation of liquor

## 11.2 (Cont'd.)

license, so what Staff has done and what the report points out, is Staff followed State law with respect to what constitutes over-concentration, and the proximity of census tracts does not fall within the definition under the State law but the Council can make a finding to overrule that of public convenience and necessity. Council Member Gregory asked what is the distance the business with a liquor license has to be from residential housing. Director Haase replied as stated in the Staff report it is 150 feet from residential, and 500 feet from a school.

Council Member Campos stated a policy should be created that states the community should be involved, and to help Staff determine whether this is a public convenience or a necessity. Director Haase agreed, and stated that criteria should be objective so it could be applied equally against all projects. He stated obviously there is opportunity to increase that level of objectivity, and work with the community on specific criteria. Council Member Campos stated she believes this is not the last time an issue will be coming forward regarding an area that could be determined an over-concentrated area. She declared Target is a family shopping area and does very well in this location, and the concern is not with Target but about bringing alcohol in an area that is already saturated with alcohol.

Mayor Gonzales expressed concern on this issue, stating it is noticeable in large areas of San José, and there should be a different type of process, not in a legal sense but a policy sense that says there is an overabundance. He stated the City could defer the ABC process or move away from its current policies, but would require additional noticing and public involvement to address the basis question which is the public convenience, and necessity of this application. He stated without that kind of input the City is solely relying on Staff and the Police Department. Mayor Gonzales expressed his support for the motion to deny, and directed Staff to look at that issue and come back to Council at a later date, in order to address that on a more global perspective. On a call for the question, the motion carried unanimously, the public hearing was closed, the appeal was denied, and Resolution No. 71800, entitled: "A Resolution of the Council of the City of San José Denying a Conditional Use Permit and ABC Exception Permit to Use Certain Real Property Described Herein for the Purpose of Allowing the Off-Sale of Alcohol at an Existing Target Retail Store", was adopted, with Staff directed to look into the issue of additional noticing and additional public involvement to address the basic question of the State of California Alcohol Beverage Control (ABC) process on Conditional Use Permits (CUP) involving public convenience and necessity, for future CUP applications. Vote: 10-0-1-0. Absent: Dando.

**11.5 PUBLIC HEARING ON CONFORMING PREZONING of the property located at the east side of Wabash Avenue, approximately 80 feet northerly of Olive Street (105 Wabash Avenue), from County to R-1-8 Residential Zoning District to allow residential uses on a 0.13 gross acre site. (Joe Y Na, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). SNI: Burbank/Del Monte.  
C 03-065 - District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-065, dated September 3, 2003, recommending approval of the Conforming Prezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 1, 2003, transmitting the Planning Commission recommendation for approval of the Conforming Prezoning of the subject property. (3) Proofs of Publication of Notice of Public Hearing, executed on August 29, and September 9, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Prezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Yeager, seconded by Council Member Cortese, and carried unanimously, the public hearing was closed, and Ordinance No. 27002, entitled: "An Ordinance of the City of San José Prezoning Certain Real Property Situated on the East Side of Wabash Avenue Approximately 80 Feet Northerly of Olive Street (105 Wabash Avenue) to R-1-8 Residence Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Dando.

**11.7 PUBLIC HEARING ON CONFORMING REZONING of the property located at the northwest corner of East Capitol Expressway and McLaughlin Avenue (1025 E. Capitol Expressway), from A(PD) Planned Development Zoning District to CN Neighborhood Commercial Zoning District, to allow commercial uses on a 15.47 gross acre site. Kenneth T. Namimatsu et al., Owner). CEQA: Resolution No. 65459, C03-074. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.  
C 03-074 - District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-074, dated September 30, 2003, recommending approval of the Conforming Rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on September 30, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Gregory, seconded by Council Member LeZotte, and carried unanimously, the public hearing was closed, and Ordinance No. 27003, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwestern Corner of East Capitol Expressway and McLaughlin Avenue to CN Commercial Neighborhood Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Dando.

- 11.10 PUBLIC HEARING ON CONFORMING REZONING of the property located at the south side of Taylor Street, approximately 70 feet westerly of Myrtle Street (1022 W. Taylor Street), from R-2 Two-Family Residence District to CO Office Commercial Zoning District, to allow commercial uses on a 0.11 gross acre site. (Evelyn Sineneng Smith, Owner). CEQA: Resolution No. 65459, C03-077. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.  
C 03-077 - District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-077, dated October 1, 2003, recommending approval of the Conforming Rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on October 7, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Yeager, seconded by Council Member Chavez, and carried unanimously, the public hearing was closed, and Ordinance No. 27004, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Taylor Street Approximately 70 Feet Westerly of Myrtle Street to CO Commercial Office Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Dando.

- 11.12 PUBLIC HEARING ON CONFORMING REZONING of the property located on the west side of Senter Road, approximately 100 feet northwesterly of Pocatello Drive (2955 Senter Road), from CP Pedestrian Commercial Zoning District to CN Neighborhood Commercial Zoning District, to allow commercial uses on a 0.4 gross acre site. (Hung Nguyen, Owner). CEQA: Resolution No. 65459, C03-067. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.  
C 03-067 - District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-067, dated September 30, 2003, recommending approval of the Conforming Rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on October 7, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Gregory, seconded by Council Member LeZotte, and carried unanimously, the public hearing was closed, and Ordinance No. 27005, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Senter Road Approximately 100 Feet Northwesterly of Pocatello Drive to CN Neighborhood Commercial Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Dando.

**11.11 PUBLIC HEARING ON PLANNED DEVELOPMENT PREZONING of the property located at the east side of Ruby Avenue, approximately 250 feet northerly of Murillo Avenue (2486 Ruby Avenue), from County to A(PD) Planned Development Zoning District, to allow up to 27,900 square feet of church/community center use on a 2.09 gross acre site. (South Bay Islamic Assn. Inc., Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

**PDC 02-047 - District 8**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-02-047, dated October 1, 2003, recommending approval of the Planned Development Prezoning. (2) Memoranda from Secretary of Planning Commission Stephen Haase, dated October 1, 2003, and October 9, 2003, transmitting the Planning Commission recommendation for approval of the Planned Development Prezoning of the subject property. (3) Proofs of Publication of Notice of Public Hearing, executed on September 26, and October 8, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Planned Development Prezoning of the subject property. Speaking in favor of the issue were Akbar Syed, Athar Siddiquee, Beena Kazi, Adil Syed, Sadaf Khatri, Khurram Tai, Tahir Anwar, South Bay Islamic Association, José Antonio Rubio, Diocese of San José, and Seth Christopher. Upon motion by Council Member Cortese, seconded by Council Member Williams, and carried unanimously, the public hearing was closed, and Ordinance No. 27006, entitled: "An Ordinance of the City of San José Prezoning Certain Real Property Situated on the East Side of Ruby Avenue, 250 feet Northerly of Murillo Avenue to A(PD) Planned Development Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Dando.

**ADJOURNMENT**

The Council of the City of San José adjourned at 8:55 p.m.

**RON GONZALES, MAYOR**

**ATTEST:**

**PATRICIA L. O'HEARN, CITY CLERK**

smd/10-21-03min